

ARKANSAS SUPREME COURT

No. CR 96-428

LARRY RAYFORD
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered February 14, 2008

PRO SE PETITION AND AMENDED
PETITION FOR WRIT OF ERROR
CORAM NOBIS [CIRCUIT COURT
OF ASHLEY COUNTY, CR 93-18]

PETITION AND AMENDED
PETITION TREATED AS PETITION
TO REINVEST JURISDICTION IN
THE TRIAL COURT TO CONSIDER
A PETITION FOR WRIT OF ERROR
CORAM NOBIS AND DENIED.

PER CURIAM

A jury found petitioner Larry Rayford guilty of capital murder and sentenced him to life imprisonment without parole. This court affirmed the judgment. *Rayford v. State*, 326 Ark. 656, 934 S.W.2d 496 (1996). Petitioner has previously sought postconviction relief under Ark. R. Crim. P. 37.1, through error coram nobis proceedings and through a habeas corpus proceeding, without success. *See Rayford v. State*, CR 07-651 (Ark. Nov. 8, 2007) (per curiam); *Rayford v. State*, CR 04-1171 (Ark. June 23, 2005) (per curiam); *Rayford v. State*, CR 96-428 (Ark. Mar. 4, 2004) (per curiam); *Rayford v. State*, CR 98-1322 (Ark. May 18, 2000) (per curiam). Petitioner now brings a pro se petition and amended petition in this court for writ of error coram nobis.¹ The amended

¹For clerical purposes, the instant petition was assigned the same docket number as the direct appeal.

petition addresses the same issue as the first petition.

In those instances where the judgment of conviction was entered on a plea of guilty or nolo contendere, or the judgment of conviction was not appealed, the petition for writ of error coram nobis is filed directly in the trial court. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam). After a judgment has been affirmed on appeal, as was the case here, a petition filed in this court for leave to proceed in the trial court is necessary because the circuit court can entertain a petition for writ of error coram nobis only after we grant permission. *Id.* We therefore treat petitioner's petitions as a petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.

A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Larimore v. State*, 341 Ark. 397, 17 S.W.3d 87 (2000). Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Penn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984) (citing *Troglin v. State*, 257 Ark. 644, 519 S.W.2d 740 (1975)). The function of the writ is to secure relief from a judgment rendered while there existed some fact which would have prevented its rendition if it had been known to the trial court and which, through no negligence or fault of the defendant, was not brought forward before rendition of judgment. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004). For the writ to issue following the affirmance of a conviction, the petitioner must show a fundamental error of fact extrinsic to the record. *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997).

The writ is allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (per curiam). We have held that a writ of error coram nobis was available to address certain errors that

are found in one of four categories: insanity at the time of trial, a coerced guilty plea, material evidence withheld by the prosecutor, or a third-party confession to the crime during the time between conviction and appeal. *Id.* at 583, 986 S.W.2d at 409.

Petitioner contends that he should be entitled to the writ because the judge who entered an order in petitioner's case, following the judgment and pending appeal, had been the prosecuting attorney who signed the information that charged petitioner with the crime. In the amended petition, petitioner additionally claims that another prosecutor persuaded the judge to omit information from the order that might have prevented the rendition of the judgment or warranted reversal on appeal. While petitioner does not clearly identify the information allegedly omitted, he appears to suggest that it was the fact that the judge had been the prosecuting attorney in the case.

Petitioner amended the petition in an attempt to couch his claim as prosecutorial misconduct and thereby attempt to fall within one of the four recognized categories of error for which error coram nobis relief may be available. He argues in his original petition that this court should recognize judicial misconduct as a new category of recognized error. But, regardless of who was involved, his allegations are not the type of error that serve the function of the writ.

The misconduct petitioner alleges, whether judicial or prosecutorial, occurred well after the judgment was rendered. Even were there error found concerning the order, the judgment was not rendered while there existed some fact which would have prevented its rendition if it had been known to the trial court. Nor has petitioner shown a fundamental error of fact extrinsic to the record. The facts are clearly included within the record in the information and the order.

Petitioner has not presented claims supporting issuance of the writ. He has therefore failed to provide grounds to reinvest jurisdiction in the trial court to consider a petition for writ of error

coram nobis. We accordingly deny petitioner's requests for error coram nobis relief.

Petition and amended petition treated as petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis and denied.